

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Federal-State Joint Board
on Universal Service

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CC Docket No. 96-45

**REPLY COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA")¹ hereby submits its
Reply Comments in the above captioned proceeding.²

I. INTRODUCTION

In its initial comments, CTIA advised the Commission to develop universal service requirements consistent with its long held policy of competitive neutrality and its preference for market solutions. Specifically, CTIA encouraged the Commission to adopt the following: (1) establish a fixed percentage -- between five and six percent -- that wireless carriers may use to allocate a portion of their telecommunications revenues to the interstate jurisdiction for universal service contribution purposes; (2) permit wireless carriers the alternative of using their own data

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 98-278 (rel. Oct. 26, 1998).

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collection figures for calculating the amount of their federal universal service contributions; (3) avoid assessing the amount of wireless universal service contributions on a flat-fee basis; (4) adopt simplifying assumptions that carriers opting out of the fixed percentage alternative may use when calculating their contribution amounts, such as designation of the MTA, rather than State lines, as the perimeter for interstate and intrastate CMRS traffic; (5) consistent with the Petition of Western Wireless, eliminate requirements that hinder CMRS carriers from serving as Eligible Telecommunications Carriers ("ETCs"); (6) clarify that States must adhere to the principles of competitive and technological neutrality in implementing their universal service mechanisms; and (7) ensure that local usage requirements for receipt of universal service support are kept to a minimum so as not to limit end users' choice of service providers and to avoid discriminating against CMRS providers in universal service support eligibility.

CTIA continues to believe that the adoption of the proposals enumerated above will best promote carrier flexibility, maintain the core principle of competitive neutrality, and foster competitive outcomes consistent with Congress' objectives for universal service reform.

In these Reply Comments, CTIA addresses certain commenters that advocate significant minimum local usage requirements for wireless carriers and other policies that have the effect of banning wireless carriers from serving as ETCs. The Commission should reject these essentially exclusionary proposals as counterproductive to the policies its has developed for universal service.

II. THE COMMISSION SHOULD PERMIT THE MARKET TO DETERMINE LOCAL USAGE REQUIREMENTS.

Certain commenters have proposed that the Commission adopt significant minimum local usage requirements for wireless carriers.³ For example, one commenter believes that the Commission should require wireless carriers to provide a minimum of 750 minutes per month (or 300 calls per month for message service).⁴ The Commission should reject such proposals.

As CTIA explained in its Comments,⁵ wireless carriers have lower access costs but higher variable (usage-based) costs than the typical wireline company. Unlimited local usage or specific requirements such as 750 minutes per month would distort competitive alternatives by eliminating more traffic-sensitive wireless service providers in favor of wireline carriers. Such an obligation would serve as a barrier to the use of spectrum-based technologies in universal service programs. This would be contrary to the Commission's principle of competitive and technological neutrality.⁶

To best serve consumers, the Commission should permit market forces to determine the appropriate minimum level of usage.⁷ Consumers in rural and high cost areas should have the

³ See, e.g., Comments of U S West Communications Inc. and U S WEST Wireless, Inc. at 10, 17 (filed Jan. 11, 1999) (advocating that wireless carriers seeking designation as an ETC provide flat-rated local service with unlimited local usage).

⁴ Comments of the Ohio Consumers' Counsel, at 6-7 (filed Jan. 11, 1999). This number is based upon the wireline mean plus one standard deviation.

⁵ Comments of CTIA at 13.

⁶ See, e.g., Comments of Bell Atlantic at 5 (filed Jan. 11, 1999) ("Inclusion of a local usage component raises issues of competitive neutrality, since landline and wireless carriers have very different cost characteristics.").

⁷ See, e.g., Comments of Sprint PCS at 7 (filed Jan. 11, 1999) (in competitive markets, there is no need to set minimum usage requirements).

right to determine their own feature preferences, whether it be fixed wireline service with unlimited local usage or a wireless service package that offers unlimited mobility. The Commission need not interfere with this choice when the market is capable of best determining consumer preference.

III. THE COMMISSION SHOULD REJECT COMMENTERS' EFFORTS TO EXCLUDE WIRELESS CARRIERS FROM QUALIFYING AS ETCs.

Certain commenters seek to reduce the Commission's jurisdiction over universal service issues. For example, one commenter believes that States -- and not the Commission -- have sole authority to determine who may qualify as an ETC in rural areas; therefore, the Commission may not impose standards of competitive neutrality or otherwise encourage additional entry in rural areas.⁸ The Commission should reject this and other proposals that serve to exclude wireless carriers from qualifying as ETCs.

TDS' position is contrary to the express terms of the Communications Act of 1934, as amended.⁹ In accordance with Section 214(e), States are generally permitted discretion (but are not required) in rural markets to designate more than one common carrier as an ETC if that carrier meets the requirements of Section 214(e)(1).¹⁰ When wireless carriers request designation as ETCs in rural markets, though, Section 253(f) specifically prohibits the States' discretion.¹¹ In

⁸ Comments of TDS Telecommunications Corporation ("TDS") at 2-3 (filed Jan. 11, 1999). Notably, TDS' comments are bereft of citation to relevant authority in support of its position.

⁹ See 47 U.S.C. §§ 214(e), 253(f) (2).

¹⁰ 47 U.S.C. § 214(e)(2).

¹¹ Section 253(f) provides, in relevant part: "It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet

accordance with Section 253(f), CMRS carriers should be permitted to provide universal service in any market upon request to the State. This result is entirely consistent with Section 332(c)(3)(A)¹² which expressly bars States from restricting CMRS entry. Moreover, wireless carriers may be less costly alternative service providers in rural markets. Thus, it is logical for Congress to remove the States' discretion to exclude CMRS carriers in rural markets.

In addition, as CTIA noted in its Comments,¹³ the Commission should ensure that States adhere to the principles of competitive and, derivatively, technological neutrality in implementing their universal service mechanisms. Specifically, States should not render wireless ETC qualifications more burdensome than wireline ETC qualifications or bias the process against wireless participation in universal service efforts. Moreover, States must not be permitted to use requirements for ETC qualification in a manner that amounts to regulation of CMRS rates in contravention of Section 332(c)(3)(A).¹⁴ Only by such action can the Commission ensure that its

the requirements in section 214(e)(1) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply . . . (2) to a provider of commercial mobile services."

¹² 47 U.S.C. § 332(c)(3)(A).

¹³ Comments of CTIA at 12.

¹⁴ In a recent filing before the United States Court of Appeals for the District of Columbia Circuit, the Commission presented its interpretation of section 332(c)(3)(A) which clearly supports CTIA's position. Specifically, the Commission noted that section 332(c)(3)(A) does, in fact, prohibit states from regulating CMRS rates and entry. See CTIA v. FCC, No 97-1690, Brief for Respondents at 11 (filed Sep. 18, 1998) ("FCC Br."). Even for intrastate universal service purposes, the Commission concluded that, pursuant to the plain meaning of the statute, a state cannot regulate the rates charged by CMRS providers unless CMRS is a substantial substitute for the local exchange carrier in that state. FCC Br. at 21, 25.

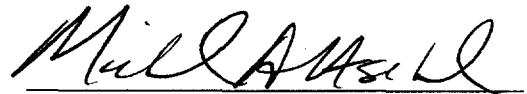
policies are followed and that wireless carriers have the ability to participate in the provision of universal service.

IV. CONCLUSION

For the foregoing reasons, CTIA respectfully requests that the Commission adopt universal service policies for wireless carriers consistent with the proposals presented herein.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
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